IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

O R D E R

S.B. CIVIL WRIT PETITION NO. 1357/2006

GOURI SHANKAR SHARMA
Vs.
ADDITIONAL CIVIL JUDGE (SD) NO.2, JAIPUR CITY & ANR.

Date: 10.08.2007.

HON'BLE MR. JUSTICE K.S. RATHORE

Mr. M.M. Ranjan for the petitioner.
Mr. Manish Sharma for the respondents.

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This writ petition is directed against the order dated 25.01.2006 passed by the Additional Civil Judge (Sr. Division) No.2, Jaipur City, Jaipur, whereby the application filed on behalf of defendant-respondent No.2 Shri Chandra Bhatia under Order 21 Rule 47/97 r/w Section 151 CPC has been allowed and the Civil Court passed the order staying further execution proceedings.

Hon'ble the Supreme Court in the case of **Babulal Vs Raj Kumar and others, AIR 1996 SC 2050,** has held as under:-

> "Where in execution of a decree for specific performance of sale deed of property the objector who was not a party to the decree filed an objection on the ground that he could not be dispossessed, the order of the executing Court overruling the objection holding that since he was not

> dispossessed his application under O.21, R.97 was not maintainable was illegal. Dispossession of the objector from the property in execution is not a condition for declining to entertain the application. An adjudication is required to be conducted under Order 21, Rule 98 before removal of the obstruction caused by the objector and a finding is required to be recorded in that behalf. The order is treated as a decree under Order 21, Rule 103 and it shall be subject to an appeal. Thus, the procedure prescribed is a complete code in itself. Therefore, the executing Court was required to determine the question, when the objectors had objected to the execution of the decree as against them as they were not parties to the decree for specific performance."

Upon careful perusal of the ratio decided by the Hon'ble Supreme Court in the aforementioned case of **Babulal (supra)** and after going through the impugned order dated 25.01.2006 passed by the Court below, it is not disputed that the objections are filed and the same are pending and the Court below has rightly stayed the execution proceedings. If the execution proceedings are allowed to be continue, then the purpose of filing objection will be frustrated and as in the instant case also, the objector are never made party to the suit. Further, the objections filed by the defendant-respondent are pending before the Court of Additional Civil Judge (Sr. Division) No.2, Jaipur City, Jaipur.

Therefore, the Additional Civil Judge (Sr. Division) No.2, Jaipur City, Jaipur is directed to dispose of the objections expeditiously but in any case not beyond the period of six months from the date of receipt of certified copy of this order and till the disposal of the objections, the order dated 25.01.2006 passed by the Court below shall remain in force.

I find no illegality or error in the impugned order dated 25.01.2006 passed by the Additional Civil Judge (Sr. Division) No.2, Jaipur City, Jaipur, which requires any interference by this Court.

Consequently, the writ petition fails and the same is dismissed.

(K.S. RATHORE),J.

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